

## 1. Area of application

1.1 The following conditions exclusively apply to all of our orders. We only make purchases and orders based on these conditions. In entering into a business relationship our partners and contractors, hereinafter referred to as “Partners”, acknowledge these Conditions of Purchasing and Ordering for the ordered deliveries and commissioned services. These Conditions of Purchasing and Ordering also apply to all subsequent transactions without them having to be expressly mentioned or agreed on conclusion of such transactions. This also applies even if the terms of business of the Partner contain other provisions.

1.2 We hereby object to the validity of deviating provisions, in particular terms of business communicated to us by the Partner. Any deviating provisions therefore do not apply, unless they are expressly confirmed or acknowledged by us in writing. Our silence in response to deviating conditions of the Partner or standard conditions communicated to us cannot be interpreted as an acknowledgement of such conditions.

## 2. Orders

2.1 Our orders are only binding when issued by us in a legally valid form either in writing, by fax or by e-mail. Oral and telephone agreements are only binding after a corresponding confirmation is given by us.

2.2 Orders are to be immediately confirmed in writing. They are deemed to be accepted in any case where they are not rejected within three days of receipt of the order. Where there is no written confirmation within three days, we are automatically entitled to withdraw from our order.

2.3 On accepting the order the Partner assumes, in respect of us, the obligation to check the content of our order and to notify us of any contradictions and any deviation of its offer from our order. An infringement of this duty to notify obligates the Partner to compensate any resulting loss.

2.4 We have the right to alter our order up until the order is confirmed. Once the order is confirmed, we have the right to alter our order in respect of the delivery item, the delivery amount or the agreed service up until the point of fulfilment of the order issued by the Partner without the Partner becoming entitled to claims for damages where our

alteration is reasonable to the Partner. Where the Partner does not object to our alteration in writing within a period of three days, the alteration carried out by us is deemed to be reasonable to the Partner.

2.5 Alterations (changes and additions) of our order by the Partner are only permitted when such alterations are communicated to us in writing by the Partner and are then confirmed by us in writing.

2.6 The preparation of drafts, projects, cost calculations etc. is, for us, free of charge and non-binding including where such services are typically provided for a fee. This shall also apply where we do not issue the order.

### **3. Delivery/ Provision**

3.1 Our order will contain the delivery period/date given in the offer by the Partner unless we have agreed otherwise in respect of the delivery periods/dates following the issue of the offer or information for the delivery period/date is not provided by the Partner. The delivery period/dates stated by us in the order are binding for the Partner in respect of us unless the Partner objects in writing to the delivery period/dates stated by us within a period of three days. However, the Partner does not have a right to object where the delivery periods/dates stated by us correspond to the offer made by the Partner or the deviating agreement between us and the Partner after receipt of the offer made by the Partner.

3.2 The first day of a calendar week (usually Monday or, where Monday is a public holiday, the following working day) always applies when confirming delivery for a calendar week.

3.3 Goods deliveries shall, in respect of the specific delivery date (time slot on the agreed day of delivery), be agreed with us and confirmed by our relevant department insofar as such an agreement has not already been made. Where goods are delivered early we have the right to refuse to accept them, send them back at the cost of the Partner or to store them at the cost and risk of the Partner up to the date of delivery. Storing the goods does not move the due date for payment to an earlier time.

3.4 Partial deliveries or services are only permitted where agreed with us in writing. The Partner is not entitled to make short deliveries or services unless expressly agreed.

3.5 The punctuality of deliveries depends on when they are received at the place of acceptance free from defects and, in the case of deliveries with assembly or installation and services, punctuality depends on the acceptability of such products or services.

3.6 The Partner falls into default on the expiration of the delivery period or the delivery date without the need for any further warning or setting of a new period. In the case that a delay in delivery is not caused by the Partner, the delivery period/delivery date is extended by the period of time corresponding to the delay which is not the fault of the Partner. However, we have a right to withdraw where it cannot be expected that we continue to adhere to the order and where, within a period of seven days from declaring a withdrawal, the delivery is not made by the Partner. Any withdrawal by us is invalid where delivery is made within this period. Irrespective of whether the Partner is responsible for the delay in delivery, the Partner shall immediately inform us of any delays as they arise when carrying out the delivery and in particular the expected duration of the delay. Where the Partner fails to provide us with this information or fails to do so promptly, the Partner undertakes to compensate us for any resulting loss. The Partner undertakes to reduce identifiable delays in delivery by means of corresponding balancing measures, and in particular expedited deliveries, irrespective of whether the Partner is responsible for the delay.

3.7 Where the Partner does not adhere to the agreed delivery date, we have the right in line with the provisions of the law to demand damages for late delivery (costs arising for us due to loss of production, changes to production, contractual penalties enforced by our customers etc.). Acceptance of a delayed delivery or service shall not constitute a waiver of the rights stated above or any other rights. Partial deliveries or services do not bring the Partner out of default. Where delivery or service default forces us, following withdrawal, to cover our requirements elsewhere, the Partner bears the difference between the price agreed with us and the higher price which we incurred as a result of covering our requirements elsewhere. Further claims for damages shall not be affected by this. We further have the right to demand as a contractual penalty for late deliveries or services 0.2% of the net value of the order per day where the agreed delivery date is exceeded up to a maximum of 5% of the net value of the order. The right to assert claims for loss over and above this shall remain unaffected. We shall enforce any contractual penalty accrued when paying the invoice of the Partner. There need

not be any retention when accepting the delivery or service. In fact, we have the right to announce any retention in respect of the Partner within one month of delivery of the last part of the delivery or service.

3.8 The order number, order item, material number, delivery amount, recipient address and supplier number must be given on all packaging units of every delivery (Euro palettes) and papers (analysis certificate, delivery note). The delivery papers are to be handed to us by the forwarding agent or carrier. (In the case of general cargo and parcel services, the delivery papers shall be attached to the delivery).

3.9 The Partner independently guarantees to fulfil the requirements of the “Delivery Conditions of Mann & Schröder GmbH” agreement.

#### **4. Transfer of Risk on Receipt or Acceptance**

4.1 In the case of deliveries without assembly or installation risk transfers on receipt at the place of acceptance as stated by us or, in the case of deliveries with assembly or installation and services, risk transfers with the acceptance of such goods or services. The Partner bears all risk, including transport risk and the risk of accidental loss or accidental deterioration up to acceptance following our incoming goods inspection, which occurs in the case of the free delivery of goods either to us or to the destination location specified by us. This does not affect the final acceptance of goods following our quality assurance process (4.3).

4.2 Where we collect the goods ourselves or the goods are collected by a forwarding agent instructed by us from the Partner’s warehouse, in the case of delivery of goods the transport risk and the risk of accidental loss or accidental deterioration are only transferred to us at the point at which the goods are loaded onto our means of transportation or that of the forwarding agent instructed by us. In other cases the acceptance and transfer of risk provisions contained in Clause 4.1 applies.

4.3 The final acceptance of the delivery occurs in each case following the delivery of the goods to us or to the destination location specified by us and subject to a quality inspection being carried out by us.

4.4 In all cases shipping occurs at the risk of the Partner, including where there has been an agreement as to cost sharing. Insofar as nothing is otherwise agreed in writing,

shipping costs are principally borne by the Partner. The Partner shall insure the shipment against transport risks at its own cost. Additional costs incurred for expedited delivery required for adhering to a delivery date shall be borne by the Partner. In the event that the prices are determined free recipient we are also able to freely determine the type of expedited delivery. Where prices are determined from the Partner's factory or distribution centre, shipping shall occur at the lowest cost in each case, provided no specific type of delivery is indicated by us. Any additional costs due to non-compliance with shipping regulations are borne by the Partner in each case.

### **5. Scope of delivery for software**

In the case of software, which forms part of the delivery of the product, and including its documentation, we have a right of use with the agreed performance features to the extent required for the contractual or typical use of the product and also the right to temporal and spatial unrestricted use within the legally permitted framework. We have the unrestricted right to pass on these legal rights to our customers.

### **6. Packaging**

Only environmentally friendly packaging materials may be used. The Partner bears the costs of packaging and packaging materials. Packaging and packaging materials are taken back by the Partner. The Partner bears the cost of the return transport. At our option we have the right to remove transport packaging and other packaging material and to deduct the costs of removal from the invoice of the Partner.

### **7. Warehousing**

Where warehousing is agreed with the Partner owing to the delivery/production agreement, the Partner undertakes to store the goods (raw materials, intermediate and finished products and packaging materials) in such a way so as to correspond with the respective product requirements. Adverse effects on the goods due to storage are to be avoided.

### **8. Prices and Payment**

8.1 The agreed prices are fixed. The prices are inclusive of packaging and free delivery, including all costs accrued by the Partner which, in particular, encompass customs duties, absorption, inspection costs etc., provided there is nothing agreed to the contrary.

8.2 Provided there is nothing else agreed as an individual order or as a “supplier contract” (total aggregate order), our payments are made in accordance with the payment conditions agreed between the Partners. Where we receive the invoice before accepting the invoiced goods or services, any time periods only begin after the goods are accepted.

8.3 Invoices are to be produced in duplicate. Invoice copies are to be marked as duplicates. In the invoice itself the order number, individual items and quantities as well as the price per item and total price, the supplier number and the shipping address must all be stated separately. The invoices must correspond with the relevant provisions of the law on VAT which thereby enables us to claim prior tax subject to the fulfilment of the respective legal requirements. Invoices shall not in any event be attached to the delivery.

8.4 The complete inclusion of order numbers and compliance with invoice formalities are a requirement for the invoice amount falling due.

8.5 In respect of the outstanding debts of the Partner we have the right, owing to our own due claims, to exercise the right of set-off or the right of retention, including where our debts have not been legally determined or are contested by the Partner. We have the right to make deductions even when exercising set-off rights. When enforcing a right of retention we are entitled, following the loss of our right of retention, to make deductions to a subsequent payment where our payment is made within the payment period during which deductions are permitted without consideration of the period of time for enforcing the right of retention. Our payments do not constitute an acknowledgement of the invoice amount forming the basis of the payment or of the demand made against us. By making payments we do not waive any existing warranty or guarantee claims due to defects in the contractual services or any connected rights.

### **9. Retention of Title**

9.1 The delivered goods are transferred into our possession upon delivery to the place of acceptance as stated by us. A retention of title agreement is hereby expressly rejected.

9.2 For the case where we expressly agree to the enforcement of a retention of title claim with the Partner, a simple reservation of title is expressly agreed. Any retention of title is lost on resale or processing/combining.

9.3 Where we find ourselves in default in respect of settling our liabilities, the Partner has the right, where there is an agreement on the retention of title, to reclaim the retained goods for which payment has not been made. This requires a further written warning with an additional period of at least two weeks being set. The enforcement of retention of title claims by the Partner is also deemed to constitute a withdrawal from the agreement.

### **10. Quality**

10.1 The goods to be delivered or service owed shall, in respect of its characteristics, composition, quality, packaging, declaration and specification, correspond to the respective applicable provisions and relevant norms. Any expected changes should be considered. In any case the Partner undertakes to inform M&S immediately in the appropriate way and with sufficient clarity about any changes that have arisen or are to be expected. Further, the goods to be delivered or service owed shall be suitable for the purpose of use stated by us and correspond to our quality requirements. The Partner shall check the suitability of our instructions and notify us of any related concerns.

10.2 The Partner shall on request produce to us corresponding evidence on compliance with significant provisions.

10.3 The Partner independently guarantees that the goods to be delivered and the services owed correspond to the particular requirements and specifications arising from the order. This applies, for example, in respect of weight, unit number, market and goods regulations and party samples. Any samples made available and forming the basis of our orders are binding. The Partner independently guarantees that the quality and state of its delivery or service corresponds to the underlying sample. Changes to the specification are only permitted subject to our written approval.

10.4 The Partner independently guarantees to fulfil the requirements of the “Quality Requirements of Mann & Schröder GmbH” agreement.

10.5 The Partner undertakes to make available all existing information on its products and services which M&S requires for further processing and fulfilling legal documentation and information obligations in respect of authorities, customers and consumers.

10.6 The Partner shall guarantee the consistent and complete traceability of the goods it delivers. Traceability extends to the raw and auxiliary materials used by the Partner in the goods it delivers as well as the packaging materials.

### **11. Material defects liability and claims for damages**

11.1 The Partner shall, at its own cost and at our option, rectify any defects which have arisen or make/provide a new delivery free of defects. Where the Partner does not rectify any defect or deliver new goods/provide a new service within a reasonable period set by us, we have the right to wholly or partly withdraw from the agreement without paying compensation, to demand a reduction in the agreed price or to carry out, or arrange to have carried out, repair work or new deliveries ourselves at the cost of the Partner or to demand damages instead of the service. The same applies accordingly where the Partner declares itself unable to rectify the defect or make a new delivery or provide a new service within a reasonable period of time. We also have the right to demand the loss, which has arisen as a result of the breach of obligation and including loss of profit, as damages. We have the right to enforce the claim for damages due to a breach of obligation by the Partner as per the applicable legal provisions. Our claim for damages is unrestricted as to amount. Where a claim is made against us for damages or product liability by one of our customers or by a third party, the Partner shall release us from such claims and reimburse any resulting costs, in particular costs of any product recall, insofar as its delivery or service or any other action was the cause of such claims and it is therefore responsible for such. The Partner is obligated to maintain a sufficient product liability insurance policy which also covers potential product recalls and considers the risk of delivering products abroad. The insurance policies and the respective payment receipts are to be presented to us on request.

11.2 The Partner undertakes to inspect the goods for defects before sending them. By way of exception from Article 377, Paragraph 1 of the German Commercial Code we are not obligated to inspect the goods after delivery and to immediately reveal any ascertained



defects. There is no assumption of approval in respect of defects. In this respect the Partner waives its claim for late notification of defects unless there is an obvious defect in the goods shipped to us and this defect has arisen after the Partner has carried out its inspection (transport-related defect). Where the Partner wants to enforce its claim for late notification of defects in this case, it shall represent and prove that the defect in the goods arose during transport.

11.3 Irrespective of the above provision, we carry out spot tests typical for the industry on receiving delivery of the goods and document the results. The same applies where we take unusual abnormalities in the delivered goods as a reason to carry out, or have carried out, special spot tests with the aid of proper scientific inspection methods. Insofar as defects in the delivered goods cannot be ascertained by us by means of spot tests in the given way, there is no recognisable defect within the meaning of Article 377, Paragraph 2 of the German Commercial Code. We have the right to rebuke such defects within the period provided by Article 438, Paragraph 1, Number 3 of the German Civil Code and including when the defective goods have since been processed or handled by us. We reserve the right to enforce any incurred costs as a damages claim (loss of production, contractual penalties by our customers etc.).

11.4 Material defects lapse in 24 months insofar as a longer legal limitation period does not apply. Where, when deciding on an alternative guarantee, we decide on a new service, the guarantee period for the new service begins anew with the receipt of the service at the place of acceptance.

11.5 Insofar as the Partner is entitled to recourse action against its upstream suppliers pursuant to Article 478 of the German Civil Code, the Partner assigns to us all such claims in full as of now. We accept this assignment.

11.6 The costs and risk of return shipping of defective delivery items are borne by the Partner.

### **12. Burden of proof**

Where a material defect becomes apparent within six months of the transfer of risk, it is assumed that the item was already defective at the point of risk transfer unless this assumption is incompatible with the item or the defect. Insofar as the justification of

our claims for damages or other guarantee claims depend on the fault of the Partner, the Partner shall show that it is not at fault. The fault of agents or other contractual partners of the Partner is assigned to the Partner.

### **13. Defects in title, commercial property rights, copyrights**

13.1 The Partner guarantees that its delivery is free from defects in title, and in particular free from commercial property rights and copyrights of third parties. In this respect we are released by the Partner from all claims by third parties arising out of defects in title or an infringement of protection rights. The limitation period for defects in title is three years.

13.2 Where a claim is made against us due to defects in title and/or protective rights in respect of the goods/items delivered to us, the Partner undertakes to take all courses of action necessary to defend such claims and, in particular, to distribute the requisite information. The Partner shall advance to us all incurred costs in respect of taking defensive courses of action. The Partner shall, at our option, carry out the defensive courses of action in our name at its own costs. Should we become liable in a legal dispute owing to a claim for defect in title or infringement of protective rights, the result of such a legal dispute is binding on the Partner, including where no third party notice is given insofar as we have informed the Partner about the legal dispute. The above does not apply when the Partner, in respect of us, acknowledges the existence of the claims being made by a third party. In such a case, in respect of us the Partner undertakes to pay damages irrespective of our other legal rights.

13.3 All further claims owing to other defects in title are not affected and cannot be excluded by the Partner.

### **14. Features of other services**

The General Contractual Conditions of the German Construction Contract Procedures (VOB/B) apply to construction, installation and other services. The legal rights in respect of defects to which we are entitled under Article 634 of the German Civil Code remain unaffected in any event.

### 15. Production resources and provisions

15.1 Possession and all copyrights to the documentation and samples made available by us remain with us. They cannot be made accessible to third parties without our prior written approval and can be reclaimed by us at any time as soon as they are no longer needed for carrying out the delivery. This shall remain so beyond the duration of the current agreement. The Partner undertakes to destroy any potential digital information and to confirm such destruction.

15.2 Any materials, parts, containers, machines, apparatus, packaging provided by us or other items transferred for the purposes of fulfilling the agreement remain our property and may only be used in line with the provisions and as part of this agreement. They are to be treated by the Partner cautiously, stored appropriately, maintained, kept in good condition and protected. In the case of processing or combining our possession continues in the newly created item.

15.3 Production means (tools, printing templates etc.) produced by the Partner to carry out the order, are transferred after complete payment to the property of M&S, even where they remain in possession of the Partner. These are to be handed over to M&S on request.

15.4 In the case of tools, the “Framework Agreement on the Production, Use and Safekeeping of Tools” applies.

### 16. Public liability

To the extent of its liability and approval obligations, the Partner shall accordingly conclude a public liability insurance policy with sufficient cover for actual and property damage and personal injury. Proof shall be made available to M&S within five working days on request.

### 17. Place of performance and jurisdiction

17.1 The place of performance for all deliveries or services is the destination location stated by us in the order. The place of performance for payments to us and our own payment obligations is Siegelsbach.

17.2 Insofar as the Partner is a businessman, legal person under public law or a special fund under public law, the jurisdiction is the court responsible for our registered office in Siegelsbach, including for processes involving bills of exchange and cheques. At our option we have the right to invoke the courts responsible for the registered office of the Partner or its leading branch.

### **18. Other provisions**

18.1 The Partner undertakes to maintain confidentiality in respect of the orders effected by us and in particular to not provide third parties with knowledge of the extent and type of the ordered goods or services and their application without our permission. The Partner shall be liable for all loss arising out of a breach of one of the above obligations.

18.2 The models, forms, samples, tools, gauges, printing templates, drawings, standard specification sheets and other documentation, in particular electronically recorded information transferred by us to the Partner, as well as the subsequently produced items, may neither be used for purposes other than the contractually specified purposes nor passed on to third parties without our prior written permission. They shall be protected from unauthorised inspection or use. Where the Partner does not comply with this obligation, we can at any time demand its surrender, irrespective of our other legal rights, in particular a claim for damages. On request or following the end of this agreement or business relationship, all of these documents, along with all copies and reproductions as well as forms, models and tools, are to be immediately surrendered to us. We retain all rights to this information, these documents and these items. This shall not affect the enforcement of additional claims.

18.3 The Partner can only assign its claims in respect of us without written permission.

18.4 The transfer of orders to third parties without our written permission is not permitted and entitles us to demand at our option damages or to wholly or partly withdraw from the agreement.

18.5 Insofar as compliance with the written form is required by these purchase conditions, such a condition cannot be replaced with compliance with the electronic form provided by Article 126 a of the German Civil Code.

## CONDITIONS OF PURCHASING AND ORDERING



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18.6 In the event that individual contractual conditions are invalid, the other conditions shall remain in full effect. The ineffective provisions shall be replaced by such provisions which, in respect of their economic result, mirror as closely as possible the economic purpose pursued by the ineffective provision in each case.

18.7 All legal relations and legal acts in the relationship between us and the Partner as well as its legal successors are exclusively subject to the law of the Federal Republic of Germany excluding the provisions of the law of conflict. The application of the UN Sales Convention (CISG) shall be excluded.

18.8 Where the Partner provides us with services, it is solely responsible for complying with accident prevention regulations, and in particular those of the relevant trade union. It also assumes responsibility to notify us by name of its employees and to instruct them to follow the respective site rules or other regulations in force in our companies when on our business premises.